

## **EXHIBIT 44**

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1                   UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF CALIFORNIA  
3                   SAN JOSE DIVISION

4  
5                   CISCO SYSTEMS, INC.           Case No.: 5:14-cv-05344-BLF (PSG)  
6  
7                   Plaintiff,

8                   v.  
9  
10                  ARISTA NETWORKS, INC.

11  
12                  Defendants.  
13                  

14                  \* HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY \*

15                  VIDEOTAPED DEPOSITION OF PHILLIP REMAKER

16                  Palo Alto, California

17                  Wednesday, March 30, 2016

18                  Volume 1

19  
20                  Reported by:

21                  LESLIE JOHNSON

22                  RPR, CSR No. 11451

23                  Job No.: 2281748

24                  PAGES 1 - 190

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7	v.	7	
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17	VIDEOTAPED DEPOSITION OF PHILLIP REMAKER, Volume 1, taken on behalf of Defendant, at 601 California Avenue, Palo Alto, California, beginning at 9:31 a.m. and ending at 5:27 p.m., on Wednesday, March 30, 2016, before LESLIE JOHNSON, Certified Shorthand Reporter No. 11451.	17	
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2		2	
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21		21	
22		22	
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<p>1 EXHIBITS (Cont.)  2 PHILLIP REMAKER  3 NUMBER DESCRIPTION PAGE  4 Exhibit 425 E-mail thread, top e-mail dated 165  5 5/7/2004, from Andrea Westerinen to  6 Max Pritikin; Bates stamped  7 CSI-CLI-02906678 to 79  8  9 Exhibit 426 PowerPoint entitled "Innovation @ 172  10 Cisco"; Bates stamped  11 CSI-CLI-01336695 to 717  12  13 Exhibit 427 Metadata; 1 page 173  14  15 Exhibit 428 E-mail dated 6/17/2015, from Phillip 180  16 Remaker to Fred Baker, et al.; Bates  17 stamped CSI-CLI-01336225 to 27  18  19 PREVIOUSLY MARKED  20  21 Exhibit 136 LinkedIn page for Tony Li; 8 pages 132  22  23  24  25</p> <p style="text-align: right;">Page 6</p>	<p>1 MR. NEUKOM: John Neukom for the plaintiff  2 and also representing today the witness.  3 THE VIDEOGRAPHER: Thank you. The  4 certified court reporter, please swear in the  5 witness.  6  7 PHILLIP REMAKER,  8 having been administered an oath, was examined and  9 testified as follows:  10  11 EXAMINATION  12 BY MR. FERRALL:  13 Q. Good morning.  14 A. Good morning.  15 Q. Please state your full name.  16 A. Phillip Remaker.  17  18 Q. Have you ever been deposed before?  19 A. I have been deposed before.  20 Q. How many times?  21 A. Once.  22 Q. What was that matter?  23 A. It was a patent litigation matter.  24 Q. Okay. Involving Cisco?  25</p> <p style="text-align: right;">Page 8</p>
<p>1 Palo Alto, California, Wednesday, March 30, 2016  2 9:31 a.m.  3  4 THE VIDEOGRAPHER: Good morning. We're on  5 the record. The time is 9:31 a.m. and the date is  6 March 30th, 2016. This begins of videotaped  7 deposition of Mr. Phillip remaker. My name is Sean  8 Grant, here with our court reporter Leslie Johnson.  9 We're here from Veritext Legal Solutions at the  10 request of counsel for Defendant. This deposition  11 is being held at Wilson Sonsini in Palo Alto,  12 California. The caption of this case is Cisco  13 Systems, Inc. versus Arista Networks, Inc., Case No.  14 5414-CV-05344-BLF.  15 Please note that audio and video recording  16 will take place unless all parties have agreed to go  17 off the record. Microphones are sensitive and they  18 pick up whispers, private conversations or cellular  19 interference.  20 At this time, will counsel please identify  21 themselves and state whom they represent.  22 MR. FERRALL: Brian Ferrall of Keker &amp;  23 Van Nest on behalf of Defendant Arista Networks.  24 MR. WONG: Ryan Wong, Keker &amp; Van Nest on  25 behalf of Arista Networks.</p> <p style="text-align: right;">Page 7</p>	<p>1 A. Yes.  2 Q. Who was the other party in that case?  3 A. I don't recall.  4 Q. Okay. How long ago was that deposition?  5 A. Probably 8 to 10 years ago.  6 Q. I'll just remind you. You understand  7 you're under oath today?  8 A. I understand.  9 Q. And is there any reason you can't provide  10 truthful testimony today?  11 A. There is not.  12 Q. You understand I'm sure that your counsel  13 may make objections periodically, but unless there  14 is an instruction not to answer a question, I'm  15 going to ask you to answer that question to the best  16 of your ability. Okay?  17 A. Okay.  18 Q. And if you don't understand a question,  19 let me know. I'll try to clarify that. All right?  20 A. Okay.  21 Q. If you do answer a question, I'm going to  22 assume that you understood it. Okay?  23 A. Okay.  24 Q. Fair?  25 And of course, we'll take breaks</p> <p style="text-align: right;">Page 9</p>

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<p>1 such as this?</p> <p>2 A. It was my idea.</p> <p>3 Q. Let me ask you to turn to page 8 of this</p> <p>4 exhibit. This slide is entitled "Engineering</p> <p>5 Philosophy."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Can you tell me what the purpose of these</p> <p>9 bullet points under "Engineering Philosophy" was?</p> <p>10 A. Can you be specific?</p> <p>11 Q. Yeah. Why did you feel it was important</p> <p>12 or necessary to convey these points about</p> <p>13 engineering philosophy?</p> <p>14 A. Some of these points help understand the</p> <p>15 way a product is designed and the way it behaves as</p> <p>16 well as the best way to interact with your peers in</p> <p>17 engineering.</p> <p>18 Q. Whose engineering philosophy does this</p> <p>19 reflect? Is this Cisco's or TAC or what?</p> <p>20 A. This is actually --</p> <p>21 MR. NEUKOM: Stop. Remember, it's</p> <p>22 important to make sure that Mr. Ferrall is done</p> <p>23 asking the question.</p> <p>24 BY MR. FERRALL:</p> <p>25 Q. All right. I was done.</p>	Page 54	<p>1 best guess of how to behave, rather than falling</p> <p>2 back on pedantic exactness and causing a failure.</p> <p>3 And the second part is that we should</p> <p>4 adhere and hew very closely without mistakes to</p> <p>5 standards.</p> <p>6 Q. And why is it that you say we should hew</p> <p>7 very closely to standards?</p> <p>8 A. We can't necessarily trust a third-party</p> <p>9 device will be as forgiving as our device will be.</p> <p>10 Q. And so why does that support the</p> <p>11 philosophy of hewing closely to a standard?</p> <p>12 MR. NEUKOM: Objection. Asks for opinion</p> <p>13 and vague.</p> <p>14 THE WITNESS: The purpose of a protocol is</p> <p>15 to achieve some customer end, and to the extent you</p> <p>16 can do so, without causing a failure is important to</p> <p>17 customers.</p> <p>18 BY MR. FERRALL:</p> <p>19 Q. Can you read the next bullet point on</p> <p>20 slide 8?</p> <p>21 A. "Bug for bug compatibility (nerd knob)."</p> <p>22 Q. What does that mean?</p> <p>23 A. In some cases, a third party may create a</p> <p>24 bug beyond the realm of what could be acceptable</p> <p>25 within the bounds of a standard, but nevertheless,</p>	Page 56
<p>1 Do you want the question read back?</p> <p>2 A. Yes, please.</p> <p>3 Q. Okay. I'll just restate it.</p> <p>4 My question was, whose engineering</p> <p>5 philosophy does this reflect?</p> <p>6 A. This is my personal interpretation of the</p> <p>7 behavior of engineering.</p> <p>8 Q. Behavior of engineering generally or</p> <p>9 engineering at Cisco or something else?</p> <p>10 A. This is specifically the engineering at</p> <p>11 Cisco.</p> <p>12 Q. The second bullet point, can you read that</p> <p>13 for me?</p> <p>14 A. "Be liberal in what you accept and strict</p> <p>15 in what you send."</p> <p>16 Q. Do you know where that pearl of wisdom</p> <p>17 comes from?</p> <p>18 A. I believe that it came from the Internet</p> <p>19 Engineering Task Force or IETF.</p> <p>20 Q. And what do you understand that to mean?</p> <p>21 A. Protocols especially can be complicated,</p> <p>22 and it's easy for somebody to make a mistake when</p> <p>23 designing a protocol.</p> <p>24 The idea is that a software or a system</p> <p>25 should be tolerant of errors and mistakes and make a</p>	Page 55	<p>1 that bug is out in the wild and causing problems for</p> <p>2 customers. The ability to allow our product to work</p> <p>3 in the face of that bug is more important than</p> <p>4 adhering to the standard. So the ability to add a</p> <p>5 feature, a command, or something for a customer in</p> <p>6 order to cope with that bug is important to our</p> <p>7 customers. So it's a continuation of the idea prior</p> <p>8 to it.</p> <p>9 Q. And what does "nerd knob" mean?</p> <p>10 A. A nerd knob is a setting that would only</p> <p>11 be set by somebody who had very deep knowledge of</p> <p>12 why it should be set. So the person with deep</p> <p>13 knowledge is a nerd, and the command is the knob.</p> <p>14 Q. Okay. And then the last bullet point on</p> <p>15 this slide says "Cisco is Cisco's first best</p> <p>16 customer."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. What does that mean?</p> <p>20 A. Cisco is the first consumer of Cisco's</p> <p>21 products. There is a program at Cisco called "Cisco</p> <p>22 at Cisco." We are very leading edge in adopting our</p> <p>23 own products. And the idea for all products is,</p> <p>24 before we give it to our customers, it's going to be</p> <p>25 good enough for us first.</p>	Page 57

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<p>1 difference was between the way Juniper would expand  2 the command after typing "sh" space versus how Cisco  3 would do it?</p> <p>4 A. Once you type enough characters for the  5 Cisco CLI to recognize the word, it will act as if  6 you typed the entire word. Whereas, the Juniper CLI  7 apparently finished the word for you when you  8 pressed space.</p> <p>9 Q. Oh, so the Cisco CLI didn't finish the  10 word, it just --</p> <p>11 A. Accepted the abbreviated form.</p> <p>Q. I see.</p> <p>Did you ever come to learn of other  14 companies characterizing their CLI as being similar  15 to Cisco's?</p> <p>16 A. I think there were some companies that  17 used some commands similar to Cisco's.</p> <p>Q. When did you first learn of that?</p> <p>19 A. Probably around 1998 or 1999.</p> <p>Q. Do you remember what companies you learned  21 had commands similar to Cisco's?</p> <p>22 A. I believe that Redback Networks used some  23 commands similar to Cisco's commands.</p> <p>Q. How did you learn that?</p> <p>25 A. I don't remember.</p>	<p>1 A. Yes.</p> <p>2 MR. NEUKOM: I don't know who this error  3 is on. Maybe it's just the way the document was  4 produced, but I'll take a standing objection to any  5 and all questions on this document on the basis that  6 it appears to be an incomplete document.</p> <p>7 MR. FERRALL: Why do you say that?</p> <p>8 MR. NEUKOM: I say that just because this  9 appears to me to be -- again, maybe this actually is  10 the document, but what I'm concerned about is this  11 appears to be an April 15 e-mail from the witness,  12 which is a reply. I'm looking at the subject line  13 with the letters RE followed by a colon, and there  14 is -- whatever the underlying -- whatever the e-mail  15 is that the witness was replying to is not on here.  16 So maybe -- maybe this is the way the document  17 actually exists, but it doesn't appear that way, at  18 least based on its face. So I'll have to take a  19 standing objection on that basis until we get that  20 resolved.</p> <p>21 BY MR. FERRALL:</p> <p>22 Q. Do you recognize Exhibit 423, Mr. Remaker?</p> <p>23 A. I do.</p> <p>Q. What were the reasons why you wrote it?</p> <p>25 A. I don't recall. It looks like it's a</p>
<p>1 Q. Were there other companies you learned  2 about having commands similar to Cisco's in the --  3 before 2000?</p> <p>4 A. None that I can recall right away.</p> <p>5 Q. How about after 2000? Did you come to  6 learn of other companies that had commands similar  7 to Cisco's?</p> <p>8 MR. NEUKOM: Objection. Misstates prior  9 testimony and vague.</p> <p>10 THE WITNESS: I presume that Arista uses  11 commands similar to Cisco commands based on the fact  12 that I've been asked to testify today.</p> <p>13 BY MR. FERRALL:</p> <p>14 Q. Okay. Well, I asked you about Arista  15 already. So let's talk about other companies.</p> <p>16 Are you familiar with any other company  17 using commands similar to Cisco's?</p> <p>18 A. Not that I can recall.</p> <p>19 (Exhibit 423 marked for identification.)</p> <p>20 BY MR. FERRALL:</p> <p>21 Q. I'm going to hand you what's been marked  22 as Exhibit 423, which is an e-mail from you dated  23 April 15, 2008, bearing control numbers CSI-CLI  24 01133437. This is an e-mail you wrote, right,  25 Mr. Remaker?</p>	<p>1 reply in the middle of a conversation.</p> <p>2 Q. Who is Mr. Pratt?</p> <p>3 A. Mr. Pratt is an engineer, development  4 engineer, at Cisco Systems.</p> <p>5 Q. The Re line says, "IOS CLI versus  6 underlying OS."</p> <p>7 Do you know what that's referring to?</p> <p>8 A. I do not without further context.</p> <p>9 Q. So you start this e-mail by writing, "I  10 would describe the IOS command set as an" -- I think  11 that should be "an," right? -- "emergent syntactic  12 anarchy (kind of like Perl, if you will)."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And was I right to -- the "and" in that  16 first sentence should be "an"?</p> <p>17 A. That is a -- yes, that is correct.</p> <p>18 Q. Okay. What do you mean by "emergent  19 syntactic anarchy"?</p> <p>20 MR. NEUKOM: Objection. The document  21 speaks for itself.</p> <p>22 THE WITNESS: The syntax is not fixed but  23 developed by individual developers and therefore  24 emergent.</p> <p>25 ////</p>

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<p>1 remind you that I'm not a lawyer.  2 BY MR. FERRALL:  3 Q. No.  4 I am trying to get that clarification.  5 Did you mean litigation there?  6 A. The litigation is what we were talking  7 about.  8 Q. Okay. Legislation is when like Congress  9 passes law. There is no such thing at Cisco about  10 Arista legislation, is there?  11 A. Not that I'm aware of, no.  12 MR. NEUKOM: You just wait.  13 BY MR. FERRALL:  14 Q. So on this bullet point, now that we've  15 clarified that "legislation" means "litigation,"  16 your point was, you would have preferred that the DE  17 community be more involved and informed about the  18 Arista litigation?  19 MR. NEUKOM: Objection. Mischaracterizes  20 the document.  21 THE WITNESS: The document bullet point  22 was intended that the most senior engineers be  23 informed of things that they might get questions  24 about.  25 ////</p>	<p>1 Q. Okay. Well, Mr. Remaker -- Remaker,  2 sorry. I almost made it through the whole  3 deposition without messing up your name.  4 So I have no further questions. This is  5 the end of your personal deposition, I guess, unless  6 Mr. Neukom has questions.  7 MR. NEUKOM: Not at this time, no.  8 MR. FERRALL: Thank you.  9 THE VIDEOGRAPHER: This concludes today's  10 videotaped deposition of Mr. Phillip Remaker. We're  11 off the record at 5:27 p.m.  12 (TIME NOTED: 5:27 P.M.)</p>
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<p>1 BY MR. FERRALL:  2 Q. And why was the Arista litigation the  3 example you choose to include in this bullet point  4 about getting controversial issues in front of us?  5 A. A number of the distinguished engineers  6 were asked about the Arista legislation when it  7 was -- pardon me -- the Arista litigation when it  8 was announced and were frustrated that they weren't  9 able to provide any answers to people asking them  10 about it.  11 Q. Is the Arista litigation a controversial  12 issue?  13 A. The Arista litigation has resulted in  14 questions from people inside and outside Cisco to  15 our distinguished engineers.  16 Q. Such as what?  17 A. What is the litigation about. What is  18 Cisco trying to accomplish. Questions like that.  19 Q. Why is that controversial?  20 A. It's controversial because the  21 distinguished engineers pride themselves on being  22 deeply informed and able to ask any questions that  23 are asked of them. The controversy arises from the  24 fact that we were uninformed of an issue that would  25 generate a lot of questions.</p>	<p>1 DECLARATION UNDER PENALTY OF PERJURY  2  3 I, PHILLIP REMAKER, the witness herein,  4 declare under penalty of perjury that I have read the  5 foregoing in its entirety; and that the testimony  6 contained therein, as corrected by me, is a true and  7 accurate transcription of my testimony elicited at said  8 time and place.  9  10 Executed this _____ day of _____ 2016, at  11 _____,  12 _____  13 (City) (State)  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: right;">PHILLIP REMAKER</p>

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1                   REPORTER'S CERTIFICATION  
2                   I, Leslie Johnson, a Certified Shorthand  
3                   Reporter of the State of California, do hereby certify:  
4                   That the foregoing proceedings were taken  
5                   before me at the time and place herein set forth; that  
6                   any witnesses in the foregoing proceedings, prior to  
7                   testifying, were administered an oath; that a record of  
8                   the proceedings was made by me using machine shorthand  
9                   which was thereafter transcribed under my direction;  
10                  that the foregoing transcript is a true record of the  
11                  testimony given.  
12                  Further, that if the foregoing pertains to  
13                  the original transcript of a deposition in a Federal  
14                  Case, before completion of the proceedings, review  
15                  of the transcript [ ] was [ ] was not requested.  
16                  I further certify I am neither financially interested in  
17                  the action nor a relative or employee of any attorney or  
18                  any party to this action.  
19                  IN WITNESS WHEREOF, I have this date  
20                  subscribed my name.  
21                  Dated: April 13, 2016  
22  
23                  <%signature%>  
24                  LESLIE JOHNSON  
25                  CSR No. 11451, RPR, CCRR

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